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CALIFORNIANS FOR ALTERNATIVES TO TOXICS

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

## CALIFORNIANS FOR ALTERNATIVES TO TOXICS.

Plaintiff,  
vs.

KERNEN CONSTRUCTION CO.,  
BEDROCK INVESTMENTS LLC, SCOTT  
FARLEY, AND KURT KERNEN.

#### Defendants.

Case No. 4:24-cv-04067

**PLAINTIFF'S OBJECTION TO  
DEFENDANTS' REQUEST FOR JUDICIAL  
NOTICE**

**Hearing:** November 13, 2024  
**Time:** 2:00 p.m.

1           **I. INTRODUCTION AND STATEMENT OF ISSUES TO BE DECIDED**

2           Defendants Kernen Construction Co., Bedrock Investments LLC, Scott Farley, and Kurt  
 3 Kernen have requested that this Court take judicial notice of:

- 4           A. The 2022 Storm Water Pollution Prevention Plan (“SWPPP”) that Defendants filed with the  
 5           State Water Resources Control Board (“SWRCB”);  
 6           B. The 2021-2022 Annual Report of Storm Water Discharges that Defendants filed with the  
 7           SWRCB;  
 8           C. The 2022-2023 Annual Report of Storm Water Discharges that Defendants filed with the  
 9           SWRCB;  
 10          D. The 2023-2024 Annual Report of Storm Water Discharges that Defendants filed with the  
 11           SWRCB;  
 12          E. The California State Water Resources Control Board’s General Permit for Storm Water  
 13           Discharged Associated with Industrial Activities.

14 (Docket No. 22 at 1-2, Exhibits A-E.) Plaintiff does not object to Defendants’ request to take judicial  
 15 notice of Exhibit E, the General Permit for Storm Water Discharged Associated with Industrial  
 16 Activities. However, Plaintiff does object to the request to take judicial notice of Exhibits A through  
 17 D because Defendants improperly ask the Court to take notice of the truth of the matters asserted  
 18 within those documents, and because the existence of these documents are irrelevant to the Motion  
 19 to Dismiss.

20           **II. JUDICIAL NOTICE MAY NOT BE TAKEN OF THE TRUTH OF STATEMENTS  
 21           CONTAINED IN ADMINISTRATIVE DOCUMENTS**

22           While a court may properly take judicial notice of the existence of documents filed with an  
 23 administrative agency, and may also take judicial notice of the fact that the documents say what they  
 24 say, it would clearly be improper for the court to take judicial notice of the *truth* of any matters  
 25 asserted in such documents. *Cal. Sportfishing Protection All. v. Shiloh Grp., LLC*, 268 F. Supp. 3d  
 26 1029, 1038-1039 (N.D. Cal. 2017) (“[W]hen courts take judicial notice of administrative records,  
 27 only the existence of the documents themselves including the findings therein are judicially  
 28 noticeable, and not the contents of the documents for the truth of the matters asserted”); *Los Angeles*

1     *Waterkeeper v. SSA Terminals, LLC*, 702 F. Supp. 3d 903, 915 (C.D. Cal. 2023). However, that is  
2 precisely what Defendants repeatedly ask this Court to do. In fact, Defendants' Motion to Dismiss is  
3 largely founded on the premise that Defendants' SWPPP and its Annual Reports somehow constitute  
4 irrefutable proof that their facility does not discharge storm water. (Docket No. 21 at 6:10-16; 8:4-  
5 20; 10:9-11:14; 11:5-9, 13:8-14:17; 17:14-22; 20:19-21:7.)

**III. EXHIBITS A THROUGH D ARE IRRELEVANT TO DEFENDANTS' MOTION TO DISMISS**

8 While the Court may take judicial notice of the existence of Defendants' 2022 Stormwater  
9 Pollution Prevention Plan and its 2021-2024 Annual Reports, and the existence of various statements  
0 made by Defendants therein, the *existence* of any of these facts is irrelevant to this Motion to  
1 Dismiss. Plaintiff does not allege in its complaint that Defendants did not file a SWPPP, or that they  
2 did not file Annual Reports. Accordingly, the existence of those documents are irrelevant to this  
3 motion, and on that basis the request should be denied. *Cal. Sportfishing Protection All. v. Shiloh*  
4 *Grp., LLC*, 268 F.Supp.3d 1029, 1038-1039 (N.D. Cal. 2017); *Los Angeles Waterkeeper v. SSA*  
5 *Terminals, LLC*, 702 F.Supp.3d 903, 915 (C.D. Cal. 2023).

7 || Dated: October 21, 2024

Respectfully Submitted,

## LAW OFFICE OF WILLIAM CARLON

By: /s/ William N. Carlon

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Attorneys for Plaintiff  
CALIFORNIANS FOR  
ALTERNATIVES TO TOXICS